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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 301

PAUL MOSER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinions Below

The Court of Appeals opinion is reported in 182 F. (2d) 734 and is set forth at page 61 of the Record. The District Court opinion is reported at 85 F. Supp. 683 (R. 56).

Jurisdiction

The judgment of the Court of Appeals was entered on June 14, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). Certiorari was granted on January 2, 1951.

Questions Presented

1. Whether the Treaty of Friendship and Commerce between the United States and the Swiss Confederation concluded November 25, 1850 exempting the nationals of each country residing in the other from personal military service granted unqualified relief from such military service without the disability of permanent ineligibility for American citizenship.

2. Whether the provisions of the Selective Training and Service Act of 1940 (50 Appendix U. S. C. 303a) authorizing neutral aliens to claim exemption under the Act upon condition that such exemption claim shall operate as a bar to American citizenship superseded or modified the aforesaid treaty.

3. Whether an exemption claim by a neutral Swiss alien asserted under the aforesaid treaty and not under the Selective Training and Service Act incurs the citizenship ban of the Selective Training and Service Act which by its express terms was applicable only to those "relieved from liability for training and service under this act."

4. Whether or not the petitioner, in claiming the aforesaid exemption, is debarred from citizenship as a matter of law, where the exemption was not obtained by him as a neutral alien, in the manner prescribed in the Selective Service Regulations, but rather was obtained for him as a Treaty alien pursuant to the Swiss Treaty of 1850, in accordance with a special procedure agreed upon between our own State Department, the Selective Service System and the Swiss Legation.

5. Whether in any event, on the facts here shown, the Government is estopped from enforcing the provisions of 50 U. S. C. App. 303a in this instance, particularly when it expressly revised the application for exemption (Form

301) and relieved petitioner from formally and affirmatively acknowledging, in writing, that he understood his application would bar him from citizenship.

6. Whether the citizenship ban of the Selective Training and Service Act of 1940 expired when the applicable provision of the said Act (50 Appendix U. S. C. 303a) were no longer operative.

Statutes and Treaties

Article II of the Convention of Friendship, Commerce, Extradition, etc., between the United States of America and the Swiss Confederation, concluded November 25, 1850, and proclaimed November 9, 1855, reads as follows: (11 Stat. 587; Malloy's Treaties and Conventions Vol. 2, p. 1763).

"Article II

> The citizens of one of the two countries, residing or established in the other, shall be free from personal military service; but they shall be liable to the pecuniary or material contributions which may be required by way of compensation, from citizens of the country where they reside, who are exempt from the said service."

Section 303(a) of Title 50, Appendix, United States Code, pertaining to exemption of neutral aliens from military service, reads in part as follows:

> "Persons liable for training and service; number; term; status after completion of term; pay; allowances; and benefits; place of employment
>
> (a) Except as otherwise provided in this Act, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of nineteen and forty-five, at the time fixed for his registration, or who attains the age of nineteen after having been required to register pursuant to section 2 of this Act, shall be liable for training and service in

the land or naval forces of the United States; Provided, That any citizen or subject of a neutral country shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States: . . ."

Section 316(a) and (b) of Title 50, Appendix, United States Code, relating to the suspension of laws conflicting with the Selective Training and Service Act of 1940, and the expiration of the Act reads as follows:

"Suspension of conflicting laws; expiration of Act; appropriations.

(a) Except as provided in this Act, all laws and parts of laws in conflict with the provisions of this Act are hereby suspended to the extent of such conflict for the period in which this Act shall be in force.

(b) The provisions of the third sentence of section 3(a) of this Act (section 303(a) of this Appendix), shall become inoperative and cease to apply at 12 o'clock post-meridian on July 1, 1947. All of the other provisions of this Act (sections 301-303, 304, 305, 306-309, 310, and 311-318 of this Appendix), except the provisions of section 3(b), 3(c), 3(d), 8, and 16(b) (sections 303(b), 303(c), 303(d), 308, and 316(b) of this Appendix), and the fourth and fifth provisos of the second sentence of section 3(a) (Section 303(a) of this Appendix), shall become inoperative and cease to apply at 12 o'clock post-meridian on March 31, 1947, or on such earlier date as may be specified in a concurrent resolution of the two Houses of Congress for that purpose, except as to offenses committed prior to such date." . . .

Statement

Petitioner is a native and citizen of Switzerland, married to an American citizen and the father of three American

born children. (R. 7-9.) He entered the United States in 1937, filed a declaration of intention in 1938 and then left the United States on May 11, 1940 to join the Swiss Army. (R. 7-9, 49). Upon his return to the United States in October, 1940, he was compelled to enter on a new immigration quota and he was advised that his declaration of intention was no longer valid (R. 46, 53). A petition for naturalization filed in 1942 was subsequently dismissed for failure to prosecute (R. 51.). In 1944 petitioner claimed exemption from military service on the basis of a treaty concluded between the United States and Switzerland in 1850. Upon a new petition for naturalization filed in 1948, petitioner was granted naturalization on July 21, 1949 which decree was reversed by the Circuit Court of Appeals. (R. 2, 67). From such reversal, application was made for certiorari which was granted by this court.

On November 25, 1850 the United States and Switzerland executed a Treaty granting the nationals of each country "residing or established in the other," unqualified exemption from military service (11 Stat. 587). The history of the treaty reveals that it was clearly understood that the quoted language was intended to cover aliens who did more than sojourn temporarily in the countries of the contracting parties. Those who acquired a fixed domicile were encompassed within this language. (5 *Miller, Treaties and other International Acts of the United States of America*, 867). Article 94 of the Swiss Military Penal Code provides that Swiss citizens who enter a foreign army are liable to criminal penalties.[1] The Selective Training and Service

[1] Article 94 of the Swiss Military Criminal Code of June 13, 1927 (Nouveau Manuel du droit Suisse, 2 vols., Zurich, 1946-47, vol. 2, p. 632) reads:

"Any citizen who, without the permission of the Federal Council enters foreign military service shall be punished by imprisonment."

(See also: *House Report 1991*, 81st Congress).

The records of our State Department will show that one, Peter Good (Gut) was recently sent to prison by the Government of Switzerland because he served in the United States Armed Forces during the War.

Act of 1940 as amended (50 U. S. C. App. 303a) granted exemption under the Act from military service to nationals of neutral countries but such exemption claim operates as a bar to American citizenship [50 U. S. C. App. 303(a)].

On June 5, 1942, the Legation of Switzerland addressed a formal complaint to the Secretary of State (Appendix A, herein) asserting that the Selective Service Act of 1940 was "not reconcilable with the Treaty of 1850". It was alleged:

> "The enactment of this new law is evidently a departure of the United States from the general rule to conscribe for military service only 'citizens of the respective country' and does not seem to be in harmony with the international usage, according to which no neutral shall be compelled to serve in the armed forces of a belligerent country. The Swiss Government esteems, therefore, that the application of the Selective Service and Training Act as amended to Swiss citizens is not reconcilable with the Treaty of 1850.
>
> "It is true that the new Selective Service Law provides for the possibility that a neutral alien may be released from all military obligations if prior to his induction in the armed forces of the United States, he has made application to be relieved from such liability, with the consequence, however, that any person who makes such an application shall thereafter be debarred from becoming a citizen of the United States. This provision, offering a possibility of exemption to a Swiss resident, may in many cases result in a practical solution, but on account of the accompanying consequences it cannot bring the Act in harmony with the Treaty of 1850, which mentions no conditions whatsoever for the exemption from military service. Under the new Act, Swiss citizens would be allowed to enjoy the privileges established by the Treaty solely if they fulfill a material condition not mentioned and not understood in the Treaty."

On July 6, 1942, the Secretary of State (See Appendix B herein) replied:

> "In addition to the foregoing I may tell you that it is not the intention of this Government to deny to Swiss nationals any right or privilege conferred on them by treaty and appropriate consideration will be given to any individual requests by Swiss nationals for exemption from military service under either of the conventions referred to above whether such requests be made by the nationals themselves or by you in their behalf."

Thereafter, the Swiss Legation informed its nationals of the procedure to be followed in claiming exemption under the Treaty of 1850 (Appendix C and D herein), advising them that under the Treaty a claim of draft exemption would not result in a forfeiture of the right to American citizenship. (R. pp. 52, 54, 57).

The form of application for draft exemption was revised and the treaty alien was no longer required to acknowledge above his signature that he understood the exemption claim would bar him from citizenship. (Exhibit 1 and 1-A; R. 14-16). A procedure was also adopted for treaty aliens "whereby the Embassy or Legation of the country of which an alien was a national would transmit to the (State) Department an application for the alien's exemption on the basis of the treaty with that country. *If the Department was satisfied that the treaty was applicable* and approved the application, it would transmit such application to National Selective Service Headquarters with the statement that it had been approved." (Appendix D).

The National Director of the Selective Service System now asserts that the revised form was to be utilized by all neutral aliens. (Appendix H). However, instructions in 1943 from National Headquarters, to the State and City Directors of the Selective Service System in New York, where the petitioner resided, were explicit that only treaty aliens could execute the revised draft exemption application. (Appendix E.) And in 1943 the New York City Selec-

tive Service System was aware of the fact that the Swiss Legation had advised its nationals that they would not be waiving their citizenship eligibility by claiming draft exemption. (Appendix F.) Moreover, these officials considered that the Swiss treaty alien had a "special status" and so advised the local draft boards. (Appendix G). Finally, the District Court found that not only the State Department but the Selective Service System as well, proceeded on the assumption that petitioner had immunity from military training under the treaty. (R. 59-60).

In accordance with the procedure agreed upon between the State Department, the Selective Service System and the Swiss Legation, there was made through the State Department, a claim for draft exemption under the Treaty of 1850 for petitioner, a Swiss citizen and army officer, who is married to a native American citizen with whom he has three American-born children (Exhibit 8, 9, 10, R. 29-31, 9). Petitioner executed a printed form for draft exemption which was specifically revised to omit the language contained in the regular forms with respect to the forfeiture of the right to apply for naturalization (Exhibit 1, R. 14-15; Exhibit 1-A, R. pp. 16-17).

The petitioner believed that he was claiming draft exemption under the Treaty of 1850 and not under the 1940 Selective Service Act (Exhibit 9, R. 30). He testified and the District and Circuit Courts found that he would not have claimed draft exemption if he knew that the United States would not recognize the treaty and if he were to be barred from naturalization (R. 53, 55, 60, 65).

On March 31, 1948 the petitioner applied for naturalization and on July 21, 1949 the District Court for the Eastern District of New York admitted him to citizenship (R. p. 4). In its opinion, 85 F. Supp. 683, the District Court held (R. 59-60):

> "Nothing could be clearer than the fact that our own State Department recognized the immunity that Moser had under the treaty. Nor could anything be plainer, to me at least, than the fact that Moser never would have signed the revised form DSS 301 if it were to be treated as a waiver of naturalization in the future. And so, assuming that the State Department made an egregious error, concurred in by the Selective Service Bureau and the Swiss Legation, I cannot see how that can be translated into a waiver by Moser of an important privilege, no matter what he signed upon the advice of these responsible agencies. In other words, even if the Swiss treaty was intended to be broken by those who enacted the Selective Training and Service Act of 1940, I find as a fact that there never was a waiver of naturalization by Moser and that the petition should be granted."

On appeal, the Circuit Court reversed in an opinion (R. 61) which held (1) that the Selective Service Act of 1940 as amended was not inconsistent with the Treaty of 1850; (2) that if the Act was inconsistent, it superseded the treaty; and (3) that although petitioner attempted to claim exemption under the treaty rather than the statute, and although he waived no treaty rights, his exemption claim barred him from naturalization. The Circuit Court concluded that "this does seem, however, to be an appealing case for legislative action."

Historical Background

(A) *Prior to 1917*

In 1804 Madison expressed the view that neutral aliens could "never be rightfully forced into military service particularly external service" and that they were protected therefrom by the law of nations (4 *Moore International Law Digest* 52). In 1862, Secretary of State Seward wrote that "there is no principle more distinctly and clearly settled

in the law of nations than the rule that resident aliens not naturalized are not liable to perform military service" (4 *Moore, supra,* p. 53). He also asserted "I can hardly suppose that there exists anywhere in the world, the erroneous belief that aliens are liable here to military service" (4 *Moore, supra,* pp. 52-53). Nevertheless, the Civil War Act of March 3, 1863 (12 Stat. 731) subjected to military service "persons of foreign birth who shall have declared on oath their intention to become citizens." Diplomatic protests followed on the ground that compulsory military service of foreign nationals would violate home laws and the law of nations. As a result by proclamation, declarant aliens were given the right to withdraw their declaration but were required to leave the country within sixty-five days (May 8, 1863, 13 Stat. 732). In 1880 when American nationals were impressed into military service by Mexico, Secretary of State Blaine asserted that compulsory draft of neutrals was a violation of international law (4 *Moore, supra,* p. 61). The Act of April 22, 1898 (30 Stat. 361, c. 187) included declarant aliens. On September 26, 1917, Secretary of State Lansing admitted the existence of the principle of international law preventing the compulsory drafting of neutral aliens except if the Nation is called upon to resist an invasion. (Hearings before the House Committee on Military Affairs, 65th Cong., 1st Sess. 1917, pp. 4, 10 (S. J. Res. 84)).

(B) *The 1917 Act*

The Selective Service Act as originally enacted during the first World War again included all declarant aliens (Act of May 18, 1917, 40 Stat. 76, sec. 2).[2] "Almost at the

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[2] It is said that approximately 40,000 protests were received. *Fitzhugh and Hyde, The Drafting of Neutral Aliens by the United States* (1942), 36 Am. J. Int. L. 369.

very beginning, the neutral nations' diplomatic representatives approached the State Department with numerous requests to relieve their nationals from the operation of the law, and many protests were filed against the induction of individual aliens into the military service, as being in violation of international law and treaty obligations."[3] (Second Report of the Provost Marshal General (1919) p. 98. See also III *Hackworth, Digest of International Law* (1942) 603 *et seq.*). Secretary of State Lansing testifying before the House Military Affairs Committee on S. J. Res. 84 (65th Cong. 1st Sess.) stated:

> "So far as the drafting of neutral aliens is concerned it would involve us in the greatest difficulties. It has never been done, to my knowledge, in this country; not even during the Civil War. Mr. Bayard states that very frankly in reviewing the question when we were protesting against an effort to compel some of our people, whom we claimed were citizens, to do service in foreign armies. We have had a great many controversies, particularly with Austria and Italy, in regard to the service of naturalized citizens of this country who are of Austrian or Italian origin, and who have returned to their country and been forced into the army to do military service, and we have always insisted that the Government had no right to compel such service. For over 100 years that has been the position of the Government of the United States.
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[3] "The American World War practice of conscripting resident declarants found the approval of a distinguished authority, but its validity has never been established by a decision of the Supreme Court. • • • Writers on international law mostly deny the lawfulness of subjecting nationals of a foreign country to military conscription." *Koessler, Rights and Duties of Declarant Aliens*, 91 U. of Pa. Law Rev. 321, 334, 335 (1942). See also: *Borchard, Diplomatic Protection of Citizens Abroad* (1915) 64-65; *Vattel, Law of Nations* (1859) 399; 1 *Oppenheim, International Law* (Lauterpacht's 5th Ed., 1937), 237, 238; *Cf.: Fitzhugh and Hyde, The Drafting of Neutral Aliens by the United States* (1942), 36 Am. J. Int. L. 369; 2 *Hyde, International Law* (1922), 244, 246, 247.

"We have, of course, several treaties that affect this question, and which would be substantially abrogated by this legislation if it was adopted; and, on the other hand, those countries with whom we have no specific treaty provisions feel as strongly as those with whom we have, and they have just as much right, although not a technical right, to claim on the general principle that their citizens should not be drafted in this country.

"Mr. Burnett. If you will pardon me, Mr. Secretary, that is the principle of international law, also, in regard to neutral aliens?

"Secretary Lansing. Yes.

"Mr. Burnett. Outside of any treaty regulations?

"Secretary Lansing. Yes; and outside of that, as a question of policy, I think it would be most unwise at the present time, when our relations with many neutrals are—I will not say precarious, but of an irritating character. It is even conceivable that it might result in driving some of them into the war against us, or at least taking a very hostile attitude toward us, which would be most unfortunate at this time."

The law was thereafter amended to provide for a claim of exemption by declarant aliens upon withdrawal of their declarations of intention which would operate to forever bar them from becoming American citizens (Act of July 9, 1918, 40 Stat. 845, 885). This amendment was not considered to be in conflict with treaty obligations. (56 Congressional Record 8414, 8415, 8485). Several attempts were made in Congress to make the provisions in regard to declarant aliens applicable to nondeclarant aliens but none were successful. (See *Tutun* v. *U. S.*, 12 F. (2d) 763, 764 (C. C. A. 1st, 1926)).

In 1919 Congressman Lufkin proposed H. R. 9416, a bill to provide for the deportation of neutral aliens who had claimed exemption from military service. (66th Congress, 1st Session). Secretary of State Lansing opposed this bill on the ground that "it may be looked upon by many foreign

governments, whose nationals might be affected thereby, as violative of provisions of treaties between the United States and those countries". (House Immigration Committee Hearings on H.R. 9416, Part 2, p. 25). In the same year, the Solicitor of the State Department Mr. Woolsey, testified in opposition to a similar bill, stating:

> "My own personal view is that it does not seem quite fair, in the act of July 9, 1918, to give these neutrals a right, allow them to exercise it freely, and then seemingly punish them for exercising that right.
>
> * * * * * * *
>
> In the State Department we were opposed to the last clause of the act of July 9, 1918, forever debarring a neutral who withdrew his declaration from becoming a citizen. We thought that it was an illustration of a wrong principal in public policy to have a class of aliens in this country who never could become citizens.
>
> * * * * * * *
>
> Now, if there is a treaty exemption from military service, a foreign government might say, 'Our citizens are exempted from military service in the United States on account of the treaty. But you have added a discriminatory penalty to that exemption by requiring that our citizens who refused to enter the military service must leave the country.' " (House Immigration Committee Hearings on H.R. 10010, 66th Congress, 1st Session, pp. 63, 65, 70).

In the judicial decisions which arose immediately subsequent to the 1917 Act, it was generally considered, despite the Congressional intention to the contrary noted above, that the Selective Service Act abrogated treaty provisions. The clearest expression of this view is contained in *Ex parte Larrucea,* 279 Fed. 981 where the court stated:

"The particular claim is made by the petitioners that the language of section 2, to the effect that the draft 'shall be based upon *liability to military service*' is conclusive of an intent upon the part of Congress in the passage of this act to exclude from the operation those who were not liable to military service because of some treaty provision. It is perhaps difficult to appreciate just exactly what Congress had in mind in the use of the phrase 'liability to military service, there being no general law to which my attention has been called definitely establishing and fixing 'liability to military service' under the laws of the United States.

* * * * * * *

* * * "however, the act does provide in express terms that the draft shall be based upon liability to military service of all male citizens and all male persons not alien enemies who have *declared* their intention to become citizens, and as above recited contains the further provision that of all persons registered none shall be exempt from service, unless exempt or excused 'as in the act provided'. The language seems indicative of such a 'positive repugnancy' (Chew Heong v. United States, 112 U. S. 536, 549, 5 Sup. Ct. 255, 28 L. Ed. 770) to the terms of the treaty with Spain as to leave no room for the conclusion that they can be read together, and that Congress was intending that citizens of Spain, as well as of other countries, who had declared their intention of becoming citizens of the United States under the naturalization laws, should be subject to the demands of the emergency. The conclusion here announced is confirmed in a degree by the concluding section of the act, suspending all laws in conflict with it during the period of emergency."

A similar conclusion was reached in a *dicta* with regard to the treaty with Switzerland. (*In re Trachsel*, 271 Fed. 779).

In 1931 the 1917 statute was modified by permitting the naturalization of any neutral alien whose withdrawal of the declaration of intention, application for discharge, and discharge occurred after November 11, 1918 (46 Stat. 1931). These statutes were repealed by the Nationality Act of 1940 (8 U. S. C. A. 904). It has been held that this repeal operated to restore the right to apply for naturalization to those previously debarred from naturalization as neutral aliens who had claimed exemption during World War I. (*Interpretation 1 of the Immigration Service*, June 5, 1941; *In re Carlson* 730-P 259786 (D. C. Ill. 1942); *Petition of Otness*, 49 F. Supp. 220 (N. D. Calif. 1943); *Contra, In re Urmenta*, 42 F. Supp. 138 (D. C. Wisc. 1941)).

(C) *The 1940 Act*

On September 16, 1940, when the present Selective Training and Service Act was passed, only declarant aliens were again subjected to induction (54 Stat. 884). On October 11, 1940, the Attorney General ruled that under the selective Service Act, every alien between 21 and 36 who lived or had a place of residence, temporary or otherwise, was required to register under the Act.[4] Diplomatic protests including those from Switzerland as indicated *supra* were again received based on treaty provisions and principles of international law. (Senate Report 394, 77th Congress, 1st Sess.) As Secretary of State Cordell Hull advised, one country indicated that under its laws its nationals are prohibited from serving in the armies of a foreign state and on numerous occasions in the past the United States had objected to the compulsory military service of its nationals in the armed services of foreign states even in the absence of treaty provisions. (Letter to Senator Reynolds, Chairman Committee on Military Affairs, May 23, 1941).

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[4] This interpretation has been rejected in *Kristensen* v. *McGrath*, 340 U.S. 162.

Section 303-a of the Selective Service Act was thereafter amended on December 20, 1941 (55 Stat. 844) to set forth the provision noted above at p. 3.[5]

The 1917 Act provided that neutrals who claimed draft exemption should be "forever" barred from citizenship. The 1940 Act merely provided that they should be thereafter debarred from becoming a citizen. In 1945, the Immigration Act of 1924 was amended to render inadmissible for permanent residence an alien who had become ineligible to citizenship under the 1940 draft act. (59 Stat. 551).

The procedure which was evolved for Treaty aliens under the 1940 Act has been described above. The State Department notes that "it does not appear that the treaty provisions were invoked by all the countries concerned". (Appendix D). The United States concluded treaties regarding military service exemption similar to that contained in the Swiss Treaty with nine additional countries. However, counsel is advised by the Legal Division of the State Department that only two of these countries, Spain and Costa Rica, invoked the Treaty procedure in Selective Service cases, and then only in rare instances. It should also be noted that we have executive agreements with nineteen foreign countries providing for the reciprocal induction of nationals of the contracting parties. (*State Department, Executive Agreement Series*, 241-350 et seq.)

(D) *The 1948 Act*

The Selective Service Act of 1948 (62 Stat. 604; 50 U. S. C. 454) applies as did the 1940 Act to all male citizens and other male persons residing in the United States. It grants

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[5] This amendment was primarily concerned with lowering of the draft age and the hearings and debates were concentrated on that subject. 87 Cong. Rec. Part 9, pp. 9921-9943; 9968-9985; Hearing before House Committee on Military Affairs on H.R. 6215, 77th Cong., 1st Sess. (1941); Hearings before Senate Committee on Military Affairs on S. 2126, 77th Cong. 1st Sess. (1941).

any alien, whether neutral or not, the right to claim draft exemption with the disability of debarment from citizenship. Under this Act, which contains no reference to treaty aliens and is substantially similar to the 1940 Act, treaty aliens enjoy a special status by regulations which incorporate the procedure described in Appendix D herein. Executive Order 9992, (32 C.F.R. 622.18; Federal Register August 30, 1948) provides as follows:

"Paragraph 622.18 Class IV-C: Aliens

* * * (b) In Class IV-C shall be placed any registrant who is an alien and who has not declared his intention to become a citizen of the United States and who is a national of a country with which there is in effect a treaty or international agreement exempting nationals of that country from military service while they are within the United States and for whom an application for deferment has been communicated to the Department of State by the government of that country and has been approved by the Department of State.

(c) In Class IV-C shall be placed any registrant who is an alien and who, prior to his induction has made application to be relieved from liability for training and service in the armed forces of the United States by filing with the local board an Application by Alien for Relief from Military Service (SSS Form No. 130) executed in duplicate. The local board shall forward the original of such form to the Director of Selective Service through the State Director of Selective Service and shall retain the duplicate in the registrant's Cover Sheet (SSS Form No. 101). * * *"

Thus it will be seen that the treaty alien may today claim exemption from the draft under a treaty without incurring the disability barring him from citizenship.

In connection with this bar of citizenship contained in our Selective Service Acts, our Government, either by statute or regulation, took great pains to eliminate any possibility of misunderstanding, by requiring, in effect, a voluntary act of citizenship renunciation on the part of

the alien claiming exemption. Thus, under the 1917 Act, which applied only to declarants, the overt act of surrendering the declaration of intention, in exchange for the exemption, was required. Under regulations supplementing the 1940 Draft Act, an express waiver in writing was required of every "neutral" alien, as distinguished from a "treaty" alien. The petitioner Moser was deprived of this protection against a misunderstanding when the State Department and the Selective Service System, together with the Swiss Legation, collaborated in order to achieve revision of the application for draft exemption (Form 301) so as to expressly delete there from the waiver of citizenship.

ARGUMENT

The Circuit Court Erred in Finding That the Selective Training and Service Act Controlled Petitioner's Status and Did Not Conflict With the Swiss Treaty.

I

The Swiss Treaty of 1850 granted draft exemption to its nationals without imposing the permanent bar "from becoming a citizen of the United States."

In *Hauenstein* v. *Lynham,* 100 U. S. 483 (1879) the Supreme Court recognized that this treaty was self effectuating and had become the law of the land. The Selective Training and Service Act of 1940 authorized relief from military service under the Act with the proviso that the applicant would incur a forfeiture of the privilege to become an American Citizen. The imposition of this condition from which the beneficiaries of the Treaty were free, if applied to a Swiss national was inconsistent with the provisions of our 1850 agreement with Switzerland. Obviously, the Selective Service Act added a condition, which did not heretofore exist, to the terms of the Treaty. The treaty granted Swiss aliens "residing or established"

in the United States freedom from military service with only the possible liability of "pecuniary or material contributions". The Selective Service Act required military service of all male aliens residing in the United States and then granted neutral aliens freedom from military service only if they waived the right to apply for American citizenship. If the Selective Service Act applied to Swiss nationals, they obviously could not freely exercise their right to be exempt from military service. This becomes more apparent when the Selective Service Act is read together with the amendment to the Immigration Act of 1924 (59 Stat. 551) which rendered inadmissible for permanent residence, neutral aliens who claimed draft exemption. The treaty gave Swiss aliens the right to reside and be permanently established in the United States and to claim draft exemption. The amendment to the 1924 Immigration Act (8 U. S. C. 224-c, 59 Stat. 551) renders them ineligible for permanent residence, if they are ineligible for citizenship.

Assuming, *arguendo*, that the treaty is susceptible of two constructions, it should be interpreted to grant Swiss aliens the right to claim draft exemption without any restrictive conditions not mentioned therein. "Where a treaty admits of two constructions, one restrictive as to the rights, that may be claimed under it, and the other liberal, the later is to be preferred." *Hauenstein* v. *Lynham*, 100 U. S. 483; *Shanks* v. *Dupont*, 3 Pet. 242.

It remains to ascertain whether the conditions of the Selective Service Act abrogated the Treaty. The court below assumed that if a conflict existed the Treaty was *pro tanto* superseded.

When the Selective Service Act of 1917 (50 U.S.C.A. 226) containing a similar provision barring neutral aliens from citizenship was enacted, as the Circuit Court noted, "no one apparently thought such a treaty as this would

be affected by the law as passed. See 56 Cong. Rec. 8415-19, 8485." When the 1940 Act became law, our State Department officials asserted that "it is not the intention of this Government to deny to Swiss nationals any right or privilege conferred on them by treaty". (Appendix B). Similarly, the Department of Justice ruled that "nationals of Switzerland were and are now entitled to claim exemption from military service on the basis of the Swiss Treaty" (*Matter of Hans Lowe*, A-5878178, July 14, 1947). This administrative construction of the Selective Training and Service Act of 1940 and the Swiss Treaty is entitled to great weight.

Norwegian Nitrogen Co. v. *U. S.*, 228 U. S. 294, 315 (1933);

United States v. *American Trucking Association*, 310 U. S. 534, 549 (1940);

Billings v. *Truesdell*, 321 U. S. 542, 552 (1944).

Thus, insofar as Congress and our administrative officials were concerned, it was not intended to abrogate, modify or suspend the right of Swiss nationals to claim draft exemption under the 1850 Treaty. Under these circumstances and in the absence of a clear expression by Congress that the Swiss Treaty was to be modified or suspended, it should not be concluded that the Selective Service Act of 1940 although inconsistent, had such effect.

In *Cook* v. *United States*, 288 U. S. 102, the government seized a British vessel suspected of smuggling liquor within the 12 mile limit authorized by the Tariff Act of 1930 which was a reenactment of the Tariff Act of 1922. The master of the vessel contended that the seizure was illegal under the British Treaty of 1924 which did not authorize seizures such distance from our shores. The Court held:

"The Treaty was not abrogated by reenacting section 581 of the Tariff Act of 1930 in the identical terms

> have been abrogated by a later statute, unless such purpose on the part of Congress has been clearly expressed."

See also: *United States* v. *Payne*, 264 U. S. 446.

In *Cheung Sum Shee* v. *Nagle*, 268 U. S. 336, it was said:

> "The wives and minor children of resident Chinese merchants were guaranteed the right of entry by the treaty of 1880 and certainly possessed it prior to July 1st when the present Immigration Act became effective. * * * That Act must be construed to preserve treaty rights unless clearly annulled * * *".

And in 2 Hyde, *International Law*, 1464, *et seq.*:

> It should be observed that the Supreme Court is wisely reluctant to construe an Act of Congress as in violation of an existing treaty . . . There appears to be no disposition to impute to it a readiness to disregard the terms of the international agreements of the United States."
>
> * * * * * * *
>
> "An intention to violate a treaty or to direct an act which would be a breach of national good faith is not to be imputed to Congress. While Congress has the power to violate treaties, it is obviously not to be assumed that Congress intends to exercise such a power unless its intention is unequivocally expressed." V Hackworth Dig. Sec. 489.

The Congressional history of the Selective Service Acts during World War I and World War II show that the intent of Congress was to comply with treaty obligations rather than to abrogate them. The Circuit Court below so ruled. Our executive departments advised the various neutral countries and in particular the Swiss Legation, that these treaties were not abrogated. And significantly, the 1948 Selective Service Act, although just as inconsistent with

the Swiss Treaty as the Draft Acts which preceded it, is presently being interpreted to grant exemption without debarment from American citizenship.

It is therefore submitted (1) that Section 3-a of the Selective Training and Service Act of 1940 if applied to a Swiss national was inconsistent with the Swiss Treaty of 1850 and (2) that the former did not supersede the Treaty because of the lack of an unequivocal expression by Congress to effect such an abrogation. And if the Treaty remained in full force and effect as contended, petitioner could claim exemption under the Treaty without forfeiting the privilege of becoming an American citizen.

II

The Circuit Court Erred in Finding That Petitioner Incurred the Disability of Permanent Exclusion from American Citizenshp under the Selective Training and Service Act of 1940.

(A) *The Selective Service Disability Was Not Incurred.*

The Selective Training and Service Act of 1940 as amended (50 App. U. S. C. 303a) specifically renders ineligible to naturalization "those relieved from liability under this Act." Accordingly, there is necessarily implicit in the decision below the finding that petitioner obtained exemption under the Selective Training and Service Act of 1940. Nevertheless, the record is clear, that petitioner sought exemption solely under the Swiss Treaty of 1850. (Exhibits 8, 9, 10, R. 29-31). Indeed, the court below recognized the procedure which petitioner followed for it stated (R. 65):

> "The appellee, however, attempted to obtain his exemption *not under the above statute* but under the treaty and he did so because he wished to become an American citizen as well as to get exemption. Indeed,

> we should recognize that his desire to become an American citizen was paramount in his mind, for the court below has found, because it believed appellee when he so testified, that he would not have sought exemption had he known that it would deprive him of naturalization rights." (Italics supplied.)

The Swiss Legation asserted that the Treaty of 1850 granted unconditional draft exemption without the disability of forfeiture of naturalization (Appendix A) and Treaty rights are to be liberally construed (*Chew Heong* v. *United States*, 112 U. S. 536). The State Department asserted that it was not the intention of the United States to deny any rights conferred by the Treaty (Appendix B). The Selective Service System recognized petitioner's claim for exemption as a "treaty" alien, rather than a "neutral" alien and expressly revised its form (D.S.S. 301) to effectuate the same. The Circuit Court found no treaty violation in the Selective Service Act of 1940 but nevertheless found that a Swiss alien could not assert draft exemption under the treaty without incurring the disability of the Selective Service Act. Two situations suggest themselves under the facts here presented:

(a) If the additional disability provisions of the Selective Training and Service Act did not apply to Swiss nationals because the Treaty remained paramount as contended in Point I, then such nationals might claim exemption solely under the Treaty. By its very language the citizenship bar of the Selective Training and Service Act attached only to those relieved under the Act. If the Treaty continued in force without modification, petitioner was relieved not under the Act but solely under the Treaty. He therefore remained eligible for citizenship and the District Court's decision should be affirmed.

(b) If the disabling provisions of the Selective Training and Service Act applied to Swiss nationals claiming draft

exemption under the 1850 Treaty either because (1) the Act was not inconsistent or (2) the Act was inconsistent but superseded the Treaty, then it is clear that petitioner mistakenly attempted to perform an act which was impossible as a matter of law, i.e. to seek draft exemption under the Treaty without incurring the disability of the Act. And petitioner's mistake was encouraged, known and induced by the Department of State and the Selective Service System. For as the District Court found (R. 65):

> "Nothing could be clearer than the fact that our own State Department recognized the immunity that Moser had under the treaty. Nor could anything be plainer, to me at least, than the fact that Moser never would have signed revised form D.S.S. 301 if it were to be treated as a waiver of naturalization in the future. And so, assuming that the State Department made an egregious error, concurred in by the Selective Service Bureau and the Swiss Legation, I cannot see how that can be translated into a waiver by Moser of an important privilege, no matter what he signed upon the advice of these responsible agencies. In other words, even if the Swiss Treaty was intended to be broken by those who enacted the Selective Training and Service Act of 1940 I find as a fact that there never was a waiver of naturalization by Moser and that the petition should be granted."

Petitioner's request to his draft board was for "unconditional relief" from military service in conformity with the Treaty and with reference to the Secretary of State's note of July 6, 1942 (R. 30-31, Appendix B). It was so recognized by the Selective Service System. This was, as the District and Circuit Court found, a request to be relieved solely under the Treaty. (R. 59, 60, 65.) Petitioner therefore sought specifically not to be relieved under the Selective Training and Service Act. But, according to the Circuit Court the very relief under the Act which he disclaimed, was accorded to him.

The general rules of law and statutory construction should be applied herein. The strict letter of the statute must yield to avoid captious interpretations, *Delgadillo* v. *Carmichael*, 333 U. S. 338 (1947), and to avoid injustice. *Church of the Holy Trinity* v. *U. S.*, 143 U. S. 457 (1891). Where as here a penalty is imposed, the statute should be liberally construed to avoid the imposition of the penalty. *Fong Haw Tan* v. *Phelan*, 333 U. S. 6 (1948). An exemption claim filed as here under a mistake known to, shared and induced by the Department of State and the Selective Service System—agencies upon whom one would naturally rely for advice upon treaty rights and draft exemption claims—should not carry with it the penalty of exclusion from American citizenship.

Mistake may be asserted in transactions between individuals and the government. *Williams* v. *United States*, 138 U. S. 514 517 (1890). Mistake is a well known legal concept which justifies relief in contracts (V *Williston and Thompson on Contracts*, p. 4399), real estate transactions (*Williams* v. *U. S., Supra*) wills (3 *Pomeroy Equity Jurisprudence*, 1941, p. 405) and in the law of marriage and divorce (3 *Nelson, Divorce and Annulment*, 1945, p. 316). That mistake may avoid a claim of draft exemption as in the case of one unable to read English has been recognized by the Department of Justice (*Matter of Lope Hormazabel* A 5725997. See also: *Neutral Aliens Who Claimed Exemption from Military Service, Monthly Review, Immigration Service*, November 1947, pp. 56, 59).

It is true that normally mistake of law will not permit the avoidance of an obligation. But where as here, the mistake of law was induced and shared by one to whom the mistaken party would normally look to for guidance as to the law, the courts will grant relief.

Thus, in *Staten Island Hygenia Ice and Cold Storage Co.* v. *U. S.*, 85 F. (2d) 68 (C. C. A. 2, 1936) it was held that

a cause of action for rescission of a tax compromise was stated where it was alleged that a mistake of law was induced by a United States tax collector. The court said at page 71:

> "Between private parties it seems to be well established that equitable relief may be had where a mistake as to the plaintiff's legal rights is indu ed by misrepresentations, even though innocently made, if it is reasonable for the plaintiff to rely upon the presumably greater knowledge of the defendant . . . It should make no difference that the United States is the party against whom rescission is sought."

And where officials of the government, State or Federal, prevent a person from appealing his case to the higher courts, it is held that he has not waived his right of appeal. *Dowd* v. *U. S. ex rel. Cook,* 71 Sup. Ct. 262; *Cf. Ackerman* v. *United States,* 71 Sup. Ct. 209.

See also: V *Williston and Thompson, supra,* p. 4439.

Here, petitioner acted upon the advice extended to him by our State Department through the Swiss Legation that his treaty rights remained in full force. He was thereby led to believe that he could claim exemption under the treaty and not incur the Selective Service Act penalty. His claim for draft exemption was for unconditional release in conformity with the treaty. His mistake—if the Circuit Court's conclusion be accepted that draft exemption could not be claimed unconditionally, *i.e.,* without the citizenship bar—was one known and induced by our government. If petitioner's draft exemption claim as asserted without a bar to citizenship was impossible as a matter of law, the request should not have been accepted in part but should have been rejected. And the petitioner should have been informed that the only way he could achieve exemption was by signing the regular exemption Form 301, containing the express waiver of citizenship. The petitioner would thus have had the power of elec-

tion either to waive citizenship or serve in the Armed Forces. Now, to place him in the same position as if he had signed the regular waiver of citizenship would be highly inequitable. The mistake of petitioner in filing such a claim and the mistake of the government in honoring the claim should be relieved as a matter of equity. Under these circumstances a disability of a permanent bar to citizenship should not be imposed and the District Court's conclusion should be affirmed.

(B) *The Selective Service Disability Is No Longer Operative.*

By virtue of Section 16 of the Selective Service Act (P.L. 473, approved June 29, 1946), Section 3(a) of the Selective Training and Service Act of 1940 became inoperative on March 31, 1947. The Immigration Service realized that a serious question was thus raised as to whether the naturalization bar remained. It consulted the Assistant Solicitor General who ruled on August 13, 1947, that:

> "An alien who obtained an exemption from military service under this section was assumed to have rendered himself ineligible for naturalization until such time as the courts have passed upon the question." *Monthly Review, Immigration and Naturalization Service,* November, 1947, p. 56, Note 1.

Repeal of the naturalization bar after World War I operated to restore the right to apply for naturalization to those previously barred from naturalization as neutral aliens.

Interpretation 1 of the Immigration Service, June 5, 1941;

In re Carlson, 730-P 2 59687, D.C. Ill. 1942;

Petition of Otness, 49 F. Supp. 220 N.D. Calif. 1943;

Contra: In re Urmenta, 42 F. Supp. 138 (D.C. Wisc. 1941).

It is a commonplace of Anglo-American law that repeal of a statute eradicates it altogether, and the situation is as if it had never existed. 59 *Corpus Juris* 1189, 1190. Expiration of a statute is in this respect the same as repeal.

United States v. *Boisdore,* 8 How. 113;
The Irresistible, 7 Wheat. 551.

Congress in terminating the Selective Training and Service Act of 1940 was explicit and specific. It directed that the entire Act, with exceptions not here pertinent "*shall become inoperative and cease to apply*" at 12 o'clock noon on March 31, 1947, "except as to offenses committed prior to such Act." (Section 316, 50 U. S. C. App., enacted June 29, 1946). Thus there can be no dispute but that Section 3(a) of the Act died on March 31, 1947, without exceptions or savings clause.

In addition, the termination provisions themselves are expressly preserved, including the phrase "offenses committed prior to such date" (March 31, 1947). This clearly refers only to prosecutions under Section 11.

It seems clear that Congress intended thereby to terminate *all* of the provisions of this section, including those creating the disability for United States citizenship.

It is an elementary canon of statutory construction that the grant of one express power or function is also necessarily the implicit exclusion of all others. "*Expressio unius est exclusio alterius.*"

Express enumeration, therefore, of the exceptions and preserved functions contained in Section 16 of the Act, terminating all functions except enumerated, must necessarily be construed to mean that the citizenship disability created by Section 3(a) was not intended to be preserved.

At common law, the unqualified repeal or termination of a statute, without a saving clause, destroyed all rights and liabilities dependent upon it.

United States v. *Reisinger*, 128 U. S. 398;
Duke Power Co. v. *S. C. Tax Comm.* (C. A. 4, 1936), 81 F. (2d) 513, Cert. Denied 298 U. S. 669.

Statutes which have been enacted in derogation of the common law to prevent criminal prosecutions under the dying statute from being terminated, and to continue in existence criminal penalties, criminal liabilities and criminal forfeitures imposed under the erstwhile statute (*United States* v. *Reisinger, supra*), have been strictly construed [*United States* v. *Hark*, 320 U. S. 531.]

In *Ewell* v. *Daggs*, 108 U. S. 143, the Supreme Court held that after the repeal of a usury statute, a usurious rate of interest, forfeited under the statute while in force, was reinstated, the interest was payable, and no forfeiture could be enforced. For the life of the statute, the interest rate on the contract constituted a basis for forfeiture of the entire amount of the interest. At the statute's death, the disability fell.

Congress has, however, altered the common law rule with regard to the repeal or expiration of a statute. The Act of February 25, 1871 (16 Stat. 1871) merely continued penalties, forfeitures and liabilities where an act of Congress had been repealed. In 1942, Attorney General Biddle requested legislation to permit prosecutions where a temporary statute had expired. (*House Report 261, 78th Cong.; 1st Session.*) H.R. 1201, which subsequently became Public Law 201 on March 22, 1944, (61. Stat. 633) was entitled "An Act to permit prosecutions after lapse of a temporary statute for offenses committed prior to its expiration". The Committee Reports clearly make known the purpose of this statute. In *Senate Report 734, 78th Congress, 2nd Session*, it is described as follows:

> " • • • the purpose of the bill is to provide that the expiration of a temporary statute shall not have the effect of preventing *prosecution* of an *offense* committed under the temporary statute. The bill would

merely make applicable to *violations* of a temporary statute the same statutory provision "that is now in effect with respect to *offenses* against a statute subsequently repealed." (Italics supplied.)

Public Law 201 (61 Stat. 633) provides that the "expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide * * * "

Is ineligibility to citizenship, a penalty, forfeiture or liability, as the terms are utilized in Public Law 201? The statutory history of the law indicates that Congress was concerned with continuing prosecutions where there had been some violation of law. The terms "penalty" and "forfeiture" denote the punishment imposed for a crime, default, or offense against the laws of a state. (*McCulloch* v. *Murphy*, 125 Fed. 147; *Cook* v. *United States*, 288 U. S. 102, 122; *Life Insurance Co. of Tenn.* v. *McCray*, 291 U. S. 566, 574; 37 *C. J. S.* 45; 23 *American Jurisprudence* 598, 599, 622). Petitioner, herein, neither violated nor transgressed any law of the United States when he sought draft exemption. The term "liability", likewise, connotes an obligation arising from the breach of a statutory duty. (*National Labor Relations Board* v. *National Garment Co.* 166 F. (2d) 233, 237 and footnote 4). There is here involved no breach of a duty, statutory or otherwise.

Racial ineligibility to citizenship (8 U. S. C. 703) has never been considered a "penalty, forfeiture or liability" as the terms are understood in legal parlance. Citizenship ineligibility under 50 U. S. C. App. 303-a has never been so designated judicially. Nor should it be so considered any more than racial ineligibility. Citizenship ineligibility and denial of naturalization have always been designated as the denial of a privilege. *United States* v. *Ginsberg*, 243, U.S. 472; *In re Martinez*, 73 F. Supp. 101, 105. Public Law 201 is therefore inapplicable to the instant case.

In *Benzian* v. *Godwin,* 168 F. (2d) 952 (overruled on other grounds in *Kristensen* v. *McGrath,* 340 U. S. 162) reliance was placed upon an amendment to the immigration laws (8 U. S. C. 224-c; 59 Stat. 551, October 29, 1945) to establish the proposition that Congress had continued the citizenship bar of Section 303-a of the Selective Training and Service Act beyond March 31, 1947. Prior to October 29, 1945, it had been decided administratively that aliens who claimed exemption from the 1940 Selective Service Act and had become ineligible to citizenship, were nevertheless admissible to the United States for permanent residence. The Attorney General believed that this was an oversight of legislative draftsmanship and recommended that the immigration laws be corrected accordingly. No thought or consideration was then given to the expiration of 50 U. S. C. App. 303-a.[6] The assumption of the *Benzian* case that a correction of the immigration definitions contained in 8 U. S. C. 224-c, extended the provisions of the Selective Service Act or evinced an intention to do so, is unwarranted. In addition it should also be noted that the *Benzian* cause was moot prior to decision in the District Court. (Memorandum of Solicitor General in the Supreme Court, No. 317, October Term, 1948, Certiorari denied, 335 U. S. 886). It is therefore not persuasive as a precedent.

The passage of Section 303-a of the Selective Service Act created a new class of aliens ineligible for naturalization—*i.e.*, those neutral aliens who claimed draft exemption. But the termination of the Selective Service Act, without a saving clause expressly preserving that ineligibility, dissolved the newly-created class of ineligibles. The Act created a bar to citizenship, but removed the bar upon its own termination.

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[6] The legislative history of the 1945 amendment to 8 U.S.C. 224-c is reflected in the immigration file of Alvaro Valas, 56127/854.

Conclusion

Petitioner claimed draft exemption under the Swiss Treaty of 1850, pursuant to advice extended to him through channels from the State Department that the treaty was still in full force and effect. Congress did not intend to abrogate or suspend the treaty although it enacted a Selective Service statute which was inconsistent therewith. In the absence of a clear Congressional expression of an intention to abrogate the treaty—and the contrary appears here—the Selective Service Act should be interpreted to harmonize with the treaty. So interpreted, petitioner's draft exemption claim should be regarded as it would under the Selective Service Act of 1948 under which treaty nationals may claim draft exemption without incurring the disability of citizenship ineligibility.

The background of petitioner's claim for draft exemption as a Swiss Treaty national clearly demonstrates the inequity of now barring him from citizenship. As a Swiss citizen and army officer he faced criminal sanctions if he did not claim draft exemption. He had a sound basis for believing that he might claim draft exemption and later become an American citizen—a belief induced by officials of our government. And as the District and Circuit Courts found, he would not have claimed exemption if he had known that it would have barred him from citizenship. In any event the bar to citizenship is no longer operative.

Under these circumstances, the District Court properly admitted petitioner to citizenship and the decision of the Circuit Court should be reversed.

Respectfully submitted,

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APPENDIX A

Legation of Switzerland
Washington, D. C.

ad N.2.5.

June 5, 1942.

The Honorable Cordell Hull, Secretary of State, Washington, D. C.

SIR:

On November 25, 1850, the United States and Switzerland concluded a Treaty of Friendship and Commerce which ever since has governed the establishment and the treatment of citizens of the two countries living in the other. In Article II of this Treaty, the contracting parties agreed that "the citizens of one of the two countries, residing or established in the other, shall be free from personal military service."

Animated by the desire of regulating the military obligation of certain individuals possessing both the American and the Swiss nationality, the two Governments complemented the aforementioned Treaty with the signing on November 11, 1937, of a Convention, concerning the military obligations of certain persons having dual nationality. According to this convention, a person born in the territory of one of the two Parties, of parents of the other, who possesses the nationality of the two countries and has his habitual residence in the State of his birth, shall not be held liable by the other State for military service in case of a temporary stay in the territory of the latter.

By signing the Treaty of 1850, and the Convention of 1937, the Governments of the United States and of Switzerland have recognized the existence in their respective territories of colonies of nationals of the other Party, and they have allowed them to maintain all lawful ties with the homeland. These nationals who have retained their original citizenship, and who by *not* applying for naturalization have clearly demonstrated their intention of remaining citizens of their Mother country, should, therefore, not only by generally recognized International Law,

but also by Treaty, be exempt from any personal military service in the armed forces of the country of their residence.

Switzerland's policy has always been in complete agreement with said principle and the treaties. Although since 1850, the Swiss Government has been forced on several occasions by international circumstances to call up for total military mobilization the full man-power of the country, representing one eighth of the entire population, no American citizen had ever been enrolled for military service during these emergencies. This was in strict observance of the military exemption clause of the Treaty of 1850, and in recognition of the rights and duties of neutral persons under International Law.

With the Act of December 20, 1941, to amend the Selective Training and Service Act of 1940, by providing for an extension of liability for military service, the Selective Service has been empowered to enforce liability for military service upon any alien of a certain age who is a resident of the United States, irrespectively of the fact whether or not he has declared his intention to become an American citizen. The new Act provides that every male person residing in the United States between the ages of 20 and 45 shall be liable for training and service in the land and naval forces of the United States.

The enactment of this new law is evidently a departure of the United States from the general rule to conscribe for military service only "citizens of the respective country" and does not seem to be in harmony with the international usage, according to which no neutral shall be compelled to serve in the armed forces of a belligerent country. The Swiss Government esteems, therefore, that the application of the Selective Service and Training Act as amended to Swiss citizens is not reconcilable with the Treaty of 1850.

It is true that the new Selective Service Law provides for the possibility that a neutral alien may be released from all military obligations if prior to his induction in the armed forces of the United States, he has made application to be relieved from such liability, with the consequence, however, that any person who makes such an application shall thereafter be debarred from becoming a citizen of

the United States. This provision, offering a possibility of exemption to a Swiss resident, may in many cases result in a practical solution, but on account of the accompanying consequences it cannot bring the Act in harmony with the Treaty of 1850, which mentions no conditions whatsoever for the exemption from military service. Under the new Act, Swiss citizens would be allowed to enjoy the privileges established by the Treaty solely if they fulfill a material condition not mentioned and not understood in the Treaty.

The text of the Treaty of 1850 furthermore makes no discrimination between persons residing temporarily in the territory of the other party and those who are established permanently there. By inserting the military clause, the two contracting parties had the intention to exempt all their nationals from service in the armed forces of the other party. Under the terms of the Selective Training and Service Act of 1940, as amended, however, only those Swiss citizens who have been declared as "non-resident" in the United States have an opportunity to be unconditionally relieved from military service, while all those considered as residing permanently in the United States could not be exempt without at the same time being debarred from becoming an American citizen. This procedure would indeed place Swiss nationals in a less favorable position than even enemy aliens in the United States, who, if considered by the military authorities as not acceptable for military service or upon their own request, can be exempt from military duties without any further consequences.

I further beg to bring to your attention the situation of a number of Swiss citizens who were inducted into the American Army before the regulations providing for an exemption from service have been in force. Inasmuch as the new Act provides a possibility for exemption only if application is made prior to induction, these Swiss citizens do not have an opportunity to be relieved from military service. They are put in an extremely precarious situation as the Swiss military penal code of June 13, 1927, prohibits under severe penalties any Swiss citizen to enter the armed forces of a foreign country.

In the light of the foregoing, conscription of Swiss

citizens in the United States who have not declared their intention of becoming American citizens, contradicts the text and the spirit of the Treaty of 1850, as well as the principles governing the rights and duties of neutrals under international law.

I have been, therefore, instructed by my Government to approach your Excellency and to request from you to intervene with the appropriate authorities, in order that at least the Swiss citizens who have not declared their intention to become American citizens may be unconditionally exempted from the liability for military service.

Accept, Sir, the assurances of my highest consideration.

(Sig.) C. BRUGGMANN.

R/H.

APPENDIX B

SIR:

I have the honor to refer to your note ad N.2.5. of June 5, 1942 concerning the liability of Swiss nationals for military service in the United States.

The note calls attention to Article II of the Convention of Friendship, Commerce and Extradition between the United States and Switzerland, concluded on November 25, 1850, under which "the citizens of one of the two countries, residing or established in the other, shall be free from personal military service", and to the Convention Regulating Military Obligations of Certain Persons Having Dual Nationality signed at Bern on November 11, 1937; and the view is expressed that under these conventions Swiss nationals in the United States are unconditionally relieved from military service.

I have taken note of your objection to the provisions of the Selective Service Act regarding the right of neutral aliens to obtain exemption by forfeiting their right thereafter to become American citizens.

All male persons within certain specified ages "residing in the United States", unless otherwise exempted, are required by Section 2 of the Selective Training and Service Act of 1940 to register and are made liable for military service by Section 3(a) of the Act:

Swiss nationals temporarily in the United States are not considered to be "residing in the United States" within the meaning of that term as used in the Selective Training and Service Act of 1940 and therefore are not required to register or to render military service under that Act. It is, however, incumbent upon those persons whose departure from the United States is to take place more than three months after their entry to make application within such period of three months to the Local Draft Board in the place in which they are staying for a determination of their residence status. When such determination establishes that they are here temporarily, they are issued a certificate of non-residence which, during the period of its validity, exempts them from registration and military service. Such certificates are renewable upon application. Swiss nationals temporarily in the United States who have registered for military service in error may have such registration canceled by following the procedure for determination of residence.

In addition to the foregoing I may tell you that it is not the intention of this Government to deny to Swiss nationals any right or privilege conferred on them by treaty and appropriate consideration will be given to any individual requests by Swiss nationals for exemption from military service under either of the conventions referred to above whether such requests be made by the nationals themselves or by you in their behalf.

Accept, Sir, the renewed assurances of my highest consideration.

For the Secretary of State:

A. A. BERLE, JR.

July 6, 1942.

APPENDIX C

In a letter dated Nov. 18, 1949, the Swiss Legation, writing to Hans Thummel, one of its Nationals, sets forth some of the facts which explain why it advised its subjects to execute DSS Form 301, revised, as follows:

"The Legation had the opportunity to discuss with the competent United States authorities the various

problems pertaining to the procedure to be followed by Swiss nationals in obtaining exemption from military service in this country. It was the purpose of these exchanges of views to ascertain whether the existing procedure could be modified, in order to bring it in complete harmony with the text and intent of article 2 of the Treaty . . . The Legation always maintained the point of view that the exemption of Swiss nationals from military service in the United States, pursuant to the provisions of the treaty, be unconditional, i. e. that the Swiss citizens shall be allowed to enjoy the privileges established by the Treaty without being compelled to fulfill material conditions not covered by the Treaty. Therefore, the Legation considered the requirement of signing a 'waiver of the right to apply for naturalization' when applying for exemption from military service, as a condition contrary to the Treaty of 1850.

* * * * * * *

"However, the Department of State assured the Swiss Government that it is not the intention of the United States Government to deny to Swiss nationals any rights or privileges conferred on them by Treaty.

"In lengthy conversations the Legation, the State Department and the Selective Service-System endeavored to work out a procedure for the exemption of non-declarant Swiss nationals which would be in conformity with the laws and the provisions of the Treaty of 1850. Finally, the following procedure to be followed by Swiss in obtaining exemption was established:

1. The Legation formally requested the exemption . . . The individual requests made by the Legation on behalf of Swiss nationals was based on article 2 of the Treaty of 1850.

2. The text of Form DSS-301 was expressly modified and was understood not to contain any waiver of the right to apply for naturalization . . .

3. The State Department was of the opinion that the applicant by filing the revised DSS Form 301 did neither waive nor forfeit his rights to apply for naturalization . . ."

APPENDIX D

Department of State
Washington

January 22, 1951

Mr. Jack Wasserman, Counsellor at Law, Warner Building, Washington 4, D. C.

My Dear Mr. Wasserman:

I have received your letter of January 5, 1951 concerning the case of *Moser* v. *the United States* in which certiorari has been granted by the Supreme Court of the United States. You request the Department's assistance in obtaining the following material and information requested by the Court in connection with the case:

(1) Preparatory work concerning the negotiations leading up to the conclusion of the Treaty of Friendship, Commerce and Navigation of 1850 between the United States and Switzerland;

(2) Names of countries other than Switzerland with which this country has treaties containing provisions for reciprocal exemption from military service; and

(3) The practice under the Selective Training and Service Act of 1940 in dealing with citizens of countries with which the United States had treaties similar to the Swiss treaty.

With respect to the Court's first request, you are advised that the records of the negotiations leading up to the conclusion of the Treaty of Friendship, Commerce and Navigation of 1850 between the United States and Switzerland are to be found in the National Archives and that you may arrange to examine them by consulting Mrs. Carroll, Room 5 E, Foreign Affairs Section, National Archives. There is also considerable material regarding the negotiation of this treaty in Hunter Miller's *Treaties and Other International Acts of the United States of America* (U.S. Government Printing Office, 1937).

In respect to the Court's second inquiry, you are advised that this Government has concluded treaties containing

provisions regarding military service similar to that contained in the Swiss treaty with the following countries: Argentina, China, Costa Rica, Ireland, Italy, Paraguay, Thailand, Spain and Yugoslavia. The treaties with China, Ireland and Italy were concluded subsequent to the enactment of the Selective Training and Service Act of 1940.

In response to the third question raised by the Court, the Department desires to point out that a procedure was worked out between it and Selective Service whereby the Embassy or Legation of the country of which an alien was a national would transmit to the Department an application for the alien's exemption on the basis of the treaty with that country. If the Department was satisfied that the treaty was applicable and approved the application, it would transmit such application to National Selective Service Headquarters, with the statement that it had been approved. The latter would thereupon notify Selective Service Headquarters of the particular state in which the alien was registered and the state headquarters would in turn notify the alien's local board. The same procedure was followed with respect to nationals of the other countries with which treaties had been concluded as was followed in the case of Swiss nationals. However, it does not appear that the treaty provisions were invoked by all the countries concerned.

Sincerely yours,

RAYMOND T. YINGLING,
Assistant Legal Adviser

APPENDIX E

National Headquarters
Selective Service System
21st Street and C Street N.W., Washington, D.C.

April 1, 1943

State Director of Selective Service, 76 State Street, Albany, New York

Attention: Colonel A. V. McDermott.

Subject: Giulio Monleone, Order No. 12285, Local Board No. 133, Brooklyn, New York

Dear Sir:

The above subject claims the right to exemption from service in our armed forces under the terms of a treaty between the United States and the Government of Switzerland, of which country he claims to be a national.

His file is returned herewith, and you are requested to instruct the local board to inform the subject that his application for relief from military service must be made on his behalf by the Embassy of his government, through our State Department. A revised Form 301, issued under the Regulations in accordance with section 3 (a) of the Selective Training and Service Act of 1940, as amended, will be given to the subject by the Embassy of his government for execution and proper filing by him with the local board.

It is to be noted that the above applies only to those neutrals claiming exemption by virtue of a treaty. Form 301, now in your possession, may be used by the local boards in accordance with section 622.43 of the Regulations, for execution by all those neutrals not claiming exemption by virtue of a treaty.

For The Director,

Robert B. Coons,
Lt. Colonel, AUS,
Ass't Chief, Manpower Division

National Headquarters
Selective Service System
21st Street and C Street, N. W.
Washington, D. C.

April 1, 1943.

State Director of Selective Service for New York City,
1 East 44th Street, New York, New York.

Subject: Hans W. Thummel
Order No. 439A
Local Board No. 31
New York, New York

DEAR COLONEL MCDERMOTT:

The above subject claims the right to exemption from service in our armed forces under the terms of a treaty between the United States and the Government of Switzerland, of which country he claims to be a national.

His file is returned herewith, and you are requested to instruct the local board to inform the subject that his application for relief from military service must be made on his behalf by the Embassy of his government, through our State Department. A revised Form 301, issued under the Regulations in accordance with section 3 (a) of the Selective Training and Service Act of 1940, as amended, will be given to the subject by the Embassy of his government for execution and proper filing by him with the local board.

It is to be noted that the above applies only to those neutrals claiming exemption by virtue of a treaty. Form 301, now in your possession, may be used by the local boards in accordance with section 622.43 of the Regulations, for execution by all those neutrals not claiming exemption by virtue of a treaty.

For The Director,

ROBERT B. COONS,
Lt. Colonel, AUS,
Ass't Chief, Manpower Division.

Copy

Copy of this letter sent to Mr. Rowlands, M.I.T., 4/12/43.
Mr. Schaublin, Legation of Switzerland, 4/12/43.

National Headquarters
Selective Service System
21st Street & C Street, N. W.
Washington, D. C.

In Replying address: The Director of Selective Service and refer to No. 11-4.1-106.

April 3, 1943.

State Director of Selective Service, 38 Chauncy Street, Boston, Massachusetts.

Subject: Robert C. Habich
Order No. 722
Local Board No. 45
Cambridge, Mass.

DEAR COLONEL SMITH:

The above subject claims the right to *exemption from service in our armed forces* under the terms of a *treaty between the United States* and the Government of *Switzerland*, of which country he claims to be a national.

His file is returned herewith, and you are requested to instruct the local board to inform the subject that his *application* for relief from military service must be made on his behalf by the *Embassy of his government*, through our State Department. A *Revised Form 301*, issued under the Regulations in accordance with section 3 (a) of the Selective Training and Service Act of 1940, as amended, will be given to the subject by the Embassy of his government for execution and *proper filing by him with the local board.*

It is to be noted that the above applies only to those neutrals claiming exemption by virtue of a treaty. Form 301, now in your possession, may be used by the local boards in accordance with section 622.43 of the Regulations, for execution by all those neutrals not claiming exemption by virtue of a treaty.

For the Director,

ROBERT B. COONS,
Lt. Colonel, AUS,
Ass't Chief, Manpower Division.

APPENDIX F

April 13, 1943.

David Kaufman, Captain, Selective Service, 1 East 44th Street, New York City.

Re: Jakob Stori
Order No. 10,769A

DEAR CAPTAIN KAUFMAN:

Pursuant to our telephone conversation this afternoon. The above registrant is a Swiss who came to this country on February 19, 1943. He registered and in the regular way supplied Questionnaire, etc. Last night at the Board Meeting he told the Board that he came to this country because he wanted to come but he objected to going into the Army. He was married on April 3, 1943, in this country.

We suggested that if he did not desire to serve in the military force that he file Form 301, explaining that if he did so, it would debar him from becoming a citizen of the United States. He then submitted to us a mimeographed letter from the Swiss Legation in Washington in which the statement was made that this Form had been revised and that by signing it he would not be debarred from becoming a citizen in due course of time.

I am referring this matter to you so that there will be no mistake about it being handled properly and the facts regarding where they should be.

Please advise.

Very truly yours,

W. D. RAWLINS,
Chairman.

APM

Selective Service
New York City Headquarters
1 East 44th Street
New York City

April 16, 1943.

Mr. W. D. Rawlins, Chairman, Local Board No. 252, 9 Station Square, Forest Hills, New York.

Subject: Jakob Stori
Order No. 10769-A

DEAR MR. RAWLINS:

Reference is made to your letter of April 13th regarding the filing of DSS Form 301.

The Selective Training and Service Act of 1940, as amended, and the Selective Service Regulations, sets forth the disability connected with the filing of DSS Form 301 by providing that an alien registrant who is a citizen or subject of a neutral country shall be relieved from liability for military training and service, but that any person who makes such application shall thereafter be debarred from becoming a citizen of the United States.

The revised Form 301 to which the registrant refers can only be filed by persons who claim exemption from military training and service by virtue of a Treaty. *A person who claims such exemption should be advised that the Application for Relief from Military Service must be made on his behalf by the Embassy of his Government through the State Department.* If the Embassy does not take action, the registrant is liable for training and service unless he voluntarily files the current DSS Form 301.

It you desire any further information, you are at liberty to call Mr. David Kaufman of this Headquarters.

For the New York City Director

ABRAHAM KAUFMAN,
Major, Infantry,
Chief, Manpower & Operations Division.

April 20, 1943.

Mr. Jakob Stori, 4 Montview Road, Summit, N. J.

Re: Order No. 10769A

DEAR SIR:

Further to your request for a release from military service, upon investigation of a case of this nature we learn that an application for Relief from Military Service must be made in your behalf by the Swiss Embassy, through the State Department, if you feel you come under the exemption clause.

If the Embassy does not take action, you are liable for training and service in the United States Military Service unless you voluntarily file the current D.S.S. Form 301.

We will proceed in the regular way on your case unless we hear further from you with reference to the exemption clause.

Very truly yours,

W. D. RAWLINS,
Chairman.

APM.

APPENDIX G

Selective Service
New York City Headquarters
1 East 44th Street
New York City

April 15, 1943.

Mr. Frank T. Keliher, Chairman, Local Board No. 133, 129 Montague Street, Brooklyn, N. Y.

Subject: Giulio Monleone
Order No. 12285

DEAR MR. MONLEONE:

We return herewith the file of the above registrant together with a copy of a letter from National Headquarters

concerning him. Please comply with the instructions contained in the attached letter.

You will note that it is not every neutral alien who is required to apply for the Revised Form 301 through his Embassy. Only those claiming *special status* by virtue of a Treaty are required to do so. All others are to be processed in the safe manner as heretofore.

For the New York City Director

ABRAHAM KAUFMAN,
Major, Infantry,
Chief, Manpower & Operations Division.

Encs.

APPENDIX H

Feb. 13, 1951.

6-59-1.

Mr. Philip B. Perlman,
Solicitor General,
Department of Justice,
Washington 25, D. C.

Dear Mr. Perlman:

This will reply to your letter of February 1, 1951, requesting a statement regarding selective service practice in dealing with citizens of countries with whom the United States had treaties similar to the Convention of Friendship, etc., concluded November 25, 1850, between the United States and the Swiss Confederation, in administering the provisions regarding aliens of the Selective Training and Service Act of 1940, as amended.

This Act, as originally enacted September 16, 1940, provided in Section 3 (a) "Except as otherwise provided in this Act, every male citizen of the United States and every male alien residing in the United States who has declared his intention to become such a citizen, between the ages of twenty-one and thirty-six at the time fixed for his registration, shall be liable for training and service in the land or naval forces of the United States."

Section 5 (a) of the Act enumerated as those aliens to be exempt from registration and service, diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, residing in the United States, who were not citizens of the United States, and who had not declared their intention to become citizens of the United States.

With the entry of the United States into the war following Pearl Harbor, the alien residing in the United States took on greater importance, both as an available source of manpower and as a possible menace to our national security. The Congress took cognizance of these facts and on December 20, 1941, amended the Selective Training and Service Act of 1940 in regard to the liability of aliens for military service. As amended December 20, 1941, Section 3 (a) read as follows:

> "Except as otherwise provided in this Act, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of twenty and forty-five at the time fixed for his registration, or who attains the age of twenty after having been required to register pursuant to section 2 of this Act, shall be liable for training and service in the land or naval forces of the United States: Provided, That any citizen or subject of a neutral country shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States: Provided further, That no citizen or subject of any country who has been or who may hereafter be proclaimed by the President to be an alien enemy of the United States shall be inducted for training and service under this Act unless he is acceptable to the land or naval forces."

Section 5 (a) was amended by inserting a comma after the words "foreign countries" following the enumeration

of the aliens to be exempt from registration and service and adding the phrase "and persons in other categories to be specified by the President."

Neither the Selective Training and Service Act of 1940, under which the Selective Service System operated until it expired on March 31, 1947, nor the Selective Service Regulations contained provisions, either as originally enacted or as amended, for the exemption of any alien by reason of a treaty provision. This Act provided a way for the exemption of aliens who are subjects, nationals or citizens of neutral countries and all citizens of neutral countries were treated in the same way in the application of the Selective Service Law regardless of whether or not the alien's neutral country had a treaty with the United States relating to military service of its subjects while in the United States.

The Department of State transmitted from time to time communications from foreign embassies and legations of cobelligerent and neutral countries to National Headquarters of the Selective Service System requesting that an alien be relieved from military obligations by reasons of the provisions of a treaty.

Selective Service never considered the alien's right to exemption to rest on the fact that he was a treaty alien but considered the status of his country in the war, as to whether it was a cobelligerent, neutral, or enemy nation. However, if the alien was a subject of a neutral country with which the United States had a treaty providing for military exemption, his local board through the Director of Selective Service for the State in which the local board was located was informed by a form letter (Form Letter No. 12, copy attached) that a claim had been made for his exemption under the terms of a treaty, and that as a *neutral alien* he was entitled to file an Application by Alien for Relief from Military Service (Form 301).

Selective Service advised the Department of State by form letter (Form Letter No. 11, copy attached) that the alien's local board was being instructed to inform him that he might obtain from his embassy or legation an Application by Alien for Relief from Military Service (Form 301, Revised).

The original Form 301 referred to in Form Letter No. 12 as the "old Form 301 (16-26414-1)" was approved December 31, 1941. This Form 301, which was printed on one page, contained a statement near the center of the page and above the place for the registrant's signature, which had to be attested before a notary public, as follows: "I understand that the making of this application to be relieved from such liability will debar me from becoming a citizen of the United States."

Because of the objections of some neutral aliens to having this statement above their attested signature, this form was revised on March 16, 1943, to eliminate the statement. Instead there was added near the bottom of the form (Form 301, Revised) below the place for the alien registrant's signature the provision in Section 3 (a) of the Act that a neutral alien who requested relief from military service would be debarred from future citizenship.

The deletion from the original form above referred to was not considered by Selective Service to constitute a recognition of any special right in a treaty alien. It was always the position of the Selective Service System that the signing of either the original or revised Form 301 clearly brought the alien within the provisions of Section 3 (a) of the Selective Training and Service Act of 1940, as amended December 20, 1941. Every Form 301 signed by a neutral alien was processed in the same manner and the original thereof was sent to the Immigration and Naturalization Service of the Department of Justice as evidence that the particular alien had secured an exemption from liability from military training and service solely by reasons of the provisions of Section 3 (a) of the Act.

Due to a mistake in proposing the revision of this form, it was first printed without the statement of the law at the bottom. This mistake was discovered shortly after the revised version was returned to Selective Service Headquarters by the printer and, so far as can now be recalled, this version was never used since it was not considered fair to the alien to let him sign a form that carried no notice or reference to the fact that such action would debar him from future citizenship in the United States.

The Revised Form 301 approved and used by Selective

Service carried the statement of the law and this is the Revised Form 301 referred to in both Form Letters Nos. 11 and 12 to be used by all neutral aliens who desired to sign it. The old Form 301 had been printed in quantity and all local boards had a supply of these forms. For economical reasons only a small number of the revised form was issued and it was to be used only in those cases in which the neutral alien requested it until the supply of the old form was exhausted. However, any neutral alien could use the revised Form 301, whether or not his country had a treaty with the United States.

Selective Service took the position that the type of form used by the neutral alien to apply for relief from military service was immaterial, just so it was the form prescribed by the President, as the law was clear and unequivocal that such action would debar the alien from future citizenship in the United States.

No agreement either written or verbal was ever made by Selective Service with the Department of State or any foreign embassy or legation to recognize treaty rights relative to military service or to give any different or preferred treatment to the nationals of any country by reason of the fact that a treaty existed. All aliens of neutral countries were treated the same under similar circumstances in accordance with the provisions of the Selective Training and Service Act of 1940, as amended, and the regulations prescribed for its administration.

Sincerely yours,

LEWIS B. HERSHEY,
Director

CC: Mr. Jack Wasserman, Counselor at Law, Warner Building, Washington 4, D. C.

Copy

National Headquarters
Selective Service System
21st Street and C Street N.W., Washington 25, D. C.

The Honorable
The Secretary of State

Subject: (Registrant's Name)
Local Board No.
(Address)
Your reference:

My Dear Mr. Secretary:

Reference is made to your letter of (Date), regarding the above-named registrant.

We are instructing his local board to inform him that he may obtain from the (Embassy or Legation) an Application by Alien for Relief from Military Service (Form 301, Revised), which form has previously been approved by you.

Sincerely yours,

Director

Copy

National Headquarters
Selective Service System
21st and C Streets NW, Washington 25, D.C.

State Director of Selective Service
(Address)

Subject: (Registrant's Name)
Local Board No.
(Address)

DEAR . . . .

The above-named registrant claims exemption from service in our armed forces under the terms of a treaty between the United States and (Country) of which latter country he states he is a national. As a neutral alien he is entitled to file an Application by Alien for Relief from Military Service (Form 301).

He may obtain an old Form 301 (16-26414-1) from the local board, or he may obtain a revised Form 301 (16-33666-1) from the (Embassy or Legation) for execution and filing by him with the local board.

Until the supply on hand is exhausted the old Form 301 may be used by the local boards in accordance with section 622.43 of the Regulations. However, if a special request is made by a registrant for a revised Form 301, he may secure it by application either to his Embassy or Legation, or to National Headquarters through his local board.

For the Director,

(Officer's Name)
(Rank)
Foreign Liaison Section
Manpower Division